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SIPDIS

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TREASURY FOR OASIA/INL
COMMERCE FOR 4331/IEP/WH/MCAMERON
USDA FOR FAS/ITP/GRUNENDFELDER

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TAGS: ETRD ECON EINV PGOV PREL PE
SUBJECT: Peru's 2006 National Trade Estimate Report

REF: State 186328

¶1. The following is Post's submission of the National Trade Estimate, as requested in reftel.

Trade Overview

¶2. The U.S. trade deficit with Peru was $1.6 billion in 2004, an increase of $895 million from the 2003 trade deficit of $710 million. U.S. goods exported in 2004 totaled $2.1 billion, up 23.4 percent from the previous year. Corresponding U.S. imports from Peru were $3.7 billion, up 53.6 percent. Peru is currently the 42nd largest export market for U.S. goods.

¶3. The stock of U.S. foreign direct investment (FDI) in Peru in 2003 and 2004 was $2.7 billion, down from $2.8 billion in 2002. U.S. FDI in Peru is concentrated primarily in the mining sector.

Free Trade Negotiations

¶4. In May 2004, the United States initiated free trade agreement (FTA) negotiations with three Andean nations -- Colombia, Peru and Ecuador. Bolivia is participating as an observer and is expected to become part of the agreement at a later stage. The U.S. Government will seek to address the issues described in this chapter within the context of these negotiations. The four Andean countries collectively represented a market of about $8.5 billion for U.S. exports in 2004, and were home to about $7.2 billion in U.S. foreign direct investment.

Import Policies

¶5. Tariffs: Peru applies tariffs to virtually all goods exported, excluding services, from the United States, although the Government of Peru has consistently lowered tariff rates since the early 1990s. Currently, 91 percent of the products imported into Peru are covered by three tariffs: a 12 percent tariff covers 43 percent of the products, four percent tariff covers 37 percent of the products and 20 percent tariff apply to about 11 percent of goods. Tariffs of zero (recently added), seven, nine, 17 percent and 20 percent apply to the remaining balance goods. The government maintains a five percent "temporary" tariff surcharge on agricultural goods to protect local production and domestic investment in the sector. The United States is seeking the elimination of Peru's duties on U.S. exports in the FTA negotiations, upon entry into force of the agreement where possible and over time for the most sensitive products.

¶6. Certain sensitive agricultural products - e.g., corn, rice, sugar and powdered milk - are subject to a Peru-specific "price band," or variable levy, which fluctuates to ensure that the import prices of such products equal a predetermined minimum import price. This levy is the difference between the minimum import price and an international reference price plus an adjustment for insurance, freight and other factors.

¶7. The U.S. Government is seeking through the FTA negotiation to eliminate Peru's barriers to trade in our agricultural products, while providing reasonable adjustment periods and safeguards for producers of import sensitive agricultural products.

¶8. Non-Tariff Measures: The Government of Peru has eliminated almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions and quantitative restrictions. However, the following imports are banned: used clothing and shoes (except as charitable donations, which are subject to the 19% VAT), used tires, remanufactured machine parts, cars over five years old and heavy trucks (weighing three tons or more) over eight years old. Used cars and trucks that are granted import permits must pay a 45 percent excise tax - compared to 20 percent for a new car - unless they are refurbished in an industrial center in the south of the country upon entry, in which case they are exempted entirely from the excise tax. Import licenses are required for firearms, munitions and explosives, chemical precursors (since these can be diverted to illegal narcotics production), ammonium nitrate fertilizer, and wild plant and animal species.

¶9. SENASA, the Peruvian plant and animal health agency, imposes several significant trade barriers (which include bans, import requirements and sanitary permits) on agricultural products, including poultry, live animals and animal genetic material. Among the affected products are:

--Poultry Products: The Peruvian government lifted its ban on U.S. poultry products in July 2004. Peru will accept imports of U.S. poultry and poultry products from 42 states, except from the states of California, Connecticut, Road Island, Pennsylvania, Texas, Delaware, New Jersey and Maryland due to Avian Influenza. Additionally, in October 2004 SENASA revised its import requirements, which brought imports from the U.S. to a halt. Currently Food Safety Inspection Service (FSIS) is working with SENASA to implement a list of requirements acceptable to both countries.

--Beef and beef products: SENASA enacted a ban on U.S. beef products in March 2004, due to Bovine Spongiforn Encephalopathy (BSE).

--Pork: In November 2004, SENASA revised its import requirements, effectively stopping trade. Since then FSIS has been working with SENASA to agree on a set of requirements that would satisfy both parties.

--Paddy Rice: Peru has a ban on paddy rice imports from the United States. SENASA is currently conducting a Pest Risk Assessment that, if successful, will result in lifting the ban. SENASA has not indicated when it will make a final decision.

Government Procurement

¶10. In 2002, in an effort to support national companies, Peru began adding 20 percent (on its rating scale of 100) to bids by Peruvian firms on government procurement contracts. U.S. pharmaceutical and medical equipment firms have raised concerns about this practice with regard to bidding on Health Ministry purchases. U.S. firms contend that the 20-point margin is excessive, giving unfair advantage to Peruvian competitors that would otherwise lose these bids on cost or technical grounds. In 2001, Peru began distinguishing between national and international bidding processes, reserving certain solicitations for participation by domestic firms only. In November 2004, the Peruvian government eliminated this distinction for the majority of products, applying it only to construction works. Peru is not a signatory to the WTO Agreement on Government Procurement. In the FTA negotiations, the U.S. Government is seeking opportunities for U.S. companies to bid on Peruvian government procurement contracts.

Intellectual Property Rights Protection

¶11. Peru is a member of the World Intellectual Property Organization (WIPO). It is also a member of the Paris Convention, Berne Convention, Rome Convention, Geneva Phonograms Convention, Brussels Satellites Convention, Universal Copyright Convention, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Peru remains on the U.S. Trade Representative's Special 301 Watch List. Concerns remain about the adequacy of IPR law enforcement, particularly with respect to the relatively weak penalties imposed on IPR violators by the criminal justice courts. Although the Peruvian government recently increased the minimum penalty for piracy to a four-year sentence, there have yet to be any convictions under the new law.

¶12. The United States is currently negotiating IPR provisions under the ongoing Andean FTA negotiations to improve protection and strengthen enforcement of IPR. The U.S. Government is seeking to address specific U.S. industry concerns related to the protection and enforcement of copyrights and related rights, patents, proprietary data for pharmaceutical and agricultural products, trademarks and geographical indications.

¶13. Copyrights: Peru's 1996 Copyright Law is generally consistent with the TRIPS Agreement. Peru joined the WCT in July 2001 and the WPPT in February 2002. Although most of the provisions of these two WIPO treaties are included in Peru's 1996 Copyright Law, officials at Indecopi, the IPR administrative agency, have acknowledged the need for additional legislation in order to clarify the rights of artists and producers. The National Association of Music Publishers continues to criticize Indecopi's enforcement, claiming that its members are not receiving the royalties due to them.

¶14. Despite Peruvian government efforts to increase enforcement, including increased raids on large-scale distributors and users of pirated material, piracy remains widespread. The International Intellectual Property Alliance estimates that piracy levels in Peru for recorded music was 98 percent in 2004-2005 with damage to U.S. industry estimated at $100 million, while motion picture piracy accounts for 60 percent of the market

for a loss of an estimated $5.5 million. Indecopi estimates that software piracy levels remained the same in 2005, at 56 percent.

¶15. In July 2004, the Peruvian Government published a Supreme Decree establishing the Law of Artists, Interpreters and Music to protect the interests and rights of those involved in the creative arts, including performers and producers of musical recordings and motion pictures, from acts of piracy. The decree argued that blank optical media was being used for "private copies" and piracy of media and software, violating copyright laws. Under the law, the Peruvian Artists Association will apply a levy on all blank optical discs, to be paid by the manufacturers of blank recording media. All imports of blank optical discs since November 2004 are subject to the levy. Imported blank CDs are subject to a $0.25 fee per unit, with imported blank DVDs subject to a $1.20 levy per unit. These fees represent 200-300 percent of product cost.

¶16. Indecopi, the Lima Chamber of Commerce and several companies are working with the Peruvian Artists Association to lower the levy to a more reasonable rate.

¶17. Patents and Trademarks: Peru's 1996 Industrial Property Rights Law provides the framework for patent protection. In 1997, based on an agreement reached with the U.S. Government, Peru addressed several inconsistencies with the WTO TRIPS Agreement provisions on patent protection and most-favored nation treatment for patents.

¶18. However, the U.S. pharmaceutical and agrochemical industries continue to have concerns about Peru's protection of confidential test data. Peruvian government health authorities approved the commercialization of new drugs that were the bioequivalents of already approved drugs, thereby denying the originator companies the exclusive use of their data. In effect, the government of Peru is allowing the test data of registered drugs from some companies to be used by others seeking approval for their own pirate version of the same product. U.S. companies also are concerned that the Peruvian government does not provide patent protection to second uses, which would allow a company with a patented compound for one use to subsequently patent a second use of that compound. Although Peruvian law provides the means for effective trademark protection, counterfeiting of trademarks and imports of counterfeit merchandise remain widespread.

Services Barriers

¶19. The U.S. Government is seeking through the FTA negotiations to secure greater access for U.S. providers of cross-border services to the Peruvian market, including in the areas of financial and telecommunications services.

¶20. Basic Telecommunications Services: In the WTO negotiations on basic telecommunications services, concluded in March 1997, Peru made commitments on all basic telecommunications services, with full market access and national treatment to be provided as of June 1999. Peru is continuing the process of developing a competitive telecommunications market and lowered its interconnection rates for most types of telephones in 2001. Termination rates for calls to mobile networks, however, remain one of the highest in the world. This issue has become particularly acute as a result of the recent acquisition by Telefonica of the second largest wireless provider in the country, thereby increasing Telefonica's market share in the wireless sector to over 70 percent.

¶21. OSIPTEL, Peru's telecommunications regulator, is currently working to establish its model to lower mobile termination rates. This model, according to the OSIPTEL timeframe, should be published in late December 2005. In May 2005, OSIPTEL temporarily reduced the mobile termination rate from $0.25 to $0.21. Other suppliers claim that unconstrained pricing by the dominant supplier has created significant barriers to competition in the wireless sector. In addition, some concerns remain about the independence and strength of the government regulatory body established to oversee the sector. In particular, U.S. industry has complained about the lack of transparency in the regulatory decision-making process.

Investment Barriers

¶22. National treatment for foreign investors is guaranteed under Peru's 1993 constitution. Prior approval is not required for investment by foreign or domestic persons, except in banking and defense-related industries. There are no limitations on the repatriation of capital or profits. Arbitration is available for disputes between foreign investors and the Government of Peru. Several U.S. companies have chosen to pursue claims through arbitration, with mixed results. In July 2005, the Supreme Court issued an edict stating that final binding arbitration awards cannot be disputed in the Judiciary.

¶23. Peruvian law restricts majority ownership of broadcast media to Peruvian citizens. Foreigners are also restricted from owning land or investing in natural resources within 50 kilometers of a border, but they can operate within those areas with special

authorization. National air and water transportation are restricted to domestic operators. In July 2001, inter-urban land transportation was also reserved for Peruvian carriers.

¶24. Under current law, foreign employees may not comprise more than 20 percent of the total number of employees of a local company (whether owned by foreign or Peruvian persons) or more than 30 percent of the total company payroll, although some exemptions apply. Newly established companies, multinational service providers, banks and transportation companies are all granted exemptions. Additionally, foreign companies do not have limitations on the number of foreign management officers they may hire.

¶25. Several U.S. firms complain that executive branch ministries, regulatory agencies, the tax agency and the judiciary lack the resources, expertise and impartiality necessary to carry out their respective mandates. Peru's weak judicial branch is a particular problem. Commercial disputes that end up in Peruvian courts are often delayed and can yield results that are not foreseeable based on a review of relevant precedents. The tax agency, with its retroactive reinterpretation of rules and disproportionate fines, has also created additional investment and trade barriers. The Toledo Administration has tried to address institutional weaknesses in the executive branch and has offered plans for judicial reform. The U.S. Government has worked with the Government of Peru both before and in parallel with the FTA negotiations to ensure a fair resolution of U.S. investor disputes, consistent with Peruvian law. Several of those disputes have been resolved while others remain pending.

¶26. The U.S. Government is seeking through the FTA negotiations a range of protections with respect to the treatment of U.S. investors, as well as a guaranteed right for those investors to have recourse to international arbitration in the event of disputes with the Peruvian government.

Electronic Commerce

¶27. The Peruvian government is moving to put in place legislation that will facilitate electronic commerce. It has already passed laws giving legal status to digital signatures, creating a framework for electronic contracts and making it illegal to tamper with, destroy or interfere with computer systems or data. The U.S. is seeking in the FTA negotiations to include rules prohibiting duties on and discrimination against digital products, such as computer programs, videos, images, and sound recordings, based on where they are made or the nationality of the firms or persons making them.

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